

MF 97-2

Tax Type: MOTOR FUEL TAX

Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE)	Docket #
OF THE STATE OF ILLINOIS)	ACCT. #
)	ACCT. #
v.)	NTL #
)	NTL #
TAXPAYER)	Barbara S. Rowe
Taxpayer)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Synopsis:

The Illinois Department of Revenue (the "Department") issued two Notices of Tax Liability on December 1, 1995 to TAXPAYER (the "Taxpayer") for penalties incurred because the taxpayer was found to be operating commercial vehicles in Illinois without securing the proper permits. The taxpayer timely protested the notices and requested a hearing. The hearing was held pursuant to the request and it is recommended that this matter be resolved in favor of the Department.

Findings of Fact:

1. The *prima facie* case of the Department was established by the admission into evidence of two Notices of Tax Liability numbered XXXXX and XXXXX, each for \$1,000.00. (Dept. Ex. No. 1 and 2)

2. Notice of Tax liability number XXXXX was issued to account number XXXXX for Illinois citation number XXXXX, issued to the taxpayer on July 18, 1995, for operating a commercial motor vehicle in Illinois without registering and securing an Illinois Motor Fuel Use Tax license and obtaining the proper decal. (Dept. Ex. No. 1)

3. Notice of Tax liability number XXXXX was issued to account number XXXXX for Illinois citation number XXXXX, issued to the taxpayer on July 24, 1995, for operating a commercial motor vehicle in Illinois without registering and securing an Illinois Motor Fuel Use Tax license and obtaining the proper decal. (Dept. Ex. No. 2)

4. The taxpayer timely protested the notices, asserting that he was "apportioned with Mo. and a member of IFTA." The taxpayer submitted copies of his International Fuel Tax Agreement (IFTA) license and apportioned registration for 1996. (Dept. Ex. No. 2; Tr. pp. 6-7)

5. The taxpayer was issued his 1995 IFTA license on July 27, 1995. (Dept. Ex. No. 2; Tr. pp. 7-8)

Conclusions of Law:

The Motor Fuel Tax Act¹ at 35 **ILCS** 505/13a.4 states:

Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction.

The license allows the operation of a commercial motor vehicle in Illinois and is to be carried in the cab of each commercial motor vehicle operating in Illinois. The section of the law above also requires that the IFTA external motor fuel tax decal be displayed on both exterior sides of the cab of the commercial vehicle. The taxpayer received two citations for non-compliance with 35 **ILCS** 505/13a.4.

The act imposes a penalty if a commercial motor vehicle is found operating in Illinois without displaying a valid motor fuel use tax license or if a vehicle is found to be operating without displaying 2 like-numbered valid motor fuel use tax decals, when required by §13a.4 of the Act. The operator must pay a minimum of \$1,000.00 as a penalty. 35 **ILCS** 505/13a.6

¹. 35 **ILCS** 505/1 *et seq.*

The Notice of Tax liability may be admitted into evidence at a hearing and the notice is *prima facie* proof of the correctness of the amount of tax due. See Dep't of Revenue v. Vallee Foods, Inc., 129 Ill.App.3d 876 (1985) Once the *prima facie* case of the Department is established, the burden is on the taxpayer to prove by competent evidence that the assessment is incorrect. Lakeland Constr. Co. v. Dept. of Revenue, 62 Ill.App.3d 1036, 1039 (1978)

In his protest, the taxpayer argued that he had obtained the required decals from the state of Missouri and submitted copies of his 1996 Missouri registration. The taxable year in question is 1995, therefore the 1996 information is not relevant. The Department contacted the state of Missouri and ascertained that the taxpayer was issued a 1995 IFTA license on July 27, 1995, days after he received the citations. The statute is clear that a taxpayer must have the required license and decals prior to operating a motor vehicle in Illinois.

It is recommended that the Director uphold Notices of Tax Liability numbered XXXXX and XXXXX.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge

January 29, 1997